

EX PARTE OR LATE FILED
ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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APR 25 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Petition for Rulemaking To Amend) **RM-11203**
47 C.F.R. §§ 76.64, 76.93, and 76.103)
)
Retransmission Consent,)
Network Non-Duplication, and)
Syndicated Exclusivity)
)
Petition for Rulemaking To Extend) **RM-10335**
Network and Non-Network Territorial)
Exclusivity, Syndicated Exclusivity, and)
Network Non-Duplication Protection Rules)

To: The Secretary

EX PARTE STATEMENT OF
THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association ("CBA") hereby submits this *Ex Parte* Statement with respect to the above-captioned petition filed by the American Cable Association ("ACA") on March 2, 2005.¹ CBA is the trade association of the nation's Class A and Low Power Television ("LPTV") stations and represents the interests of those stations in legal and regulatory proceedings.

2. ACA asks the Commission to adjust the bargaining power between television stations and small cable systems during retransmission consent negotiations, so that if a TV station demands cash or other compensation for granting consent, the cable operator may seek retransmission consent from a distant station instead, hopefully at a lower price. ACA also asks

¹ The Commission gave public notice of the ACA petition and invited comment on March 17, 2005. See Office of the Secretary, Petitions for Rulemaking Filed, Report No. 2696. This statement is being filed as an *Ex Parte* Statement because the formal comment deadline has passed, and CBA is not urging either grant or denial of the ACA petition.

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for a rule that would forbid any contract between a network or syndicator and any TV station that prohibited that TV station from granting retransmission consent to a small cable operator, even if the cable system and TV station were not in the same Designated Market Area ("DMA"). ACA thus seeks to abrogate privately negotiated exclusivity rights where the exercise of those rights results in demands for compensation for cable carriage. ACA would honor those rights where a TV station elected must-carry status or granted retransmission consent without compensation.²

3. ACA's scenario assumes that all TV stations have the right to choose between must-carry and retransmission consent status, but that is not so. Two important station classes are ignored: Class A stations and LPTV stations, most of which do not have any cable must-carry rights and none of which have any satellite carriage rights.³ Not only do they not have must-carry rights but they are also denied regulatory enforceability of network and syndicated exclusivity rights, even when they have negotiated those rights at arms-length with their program suppliers. ACA does not indicate that its members would honor the rights negotiated by Class A and LPTV stations. In fact, the cable industry has a history of ignoring such rights and importing distant duplicating signals, to the point of driving some LPTV stations out of business.

4. The unfortunate history of privately-negotiated Class A and LPTV exclusivity rights, which problem was acknowledged by the Commission as far back as 1989, is recounted in a petition for rule making by Venture Technologies Group, LLC ("Venture"), RM-10335. That

² CBA is not certain that the Commission has the statutory authority to alter the must-carry/retransmission consent regulatory regime in the manner requested by ACA, but CBA will leave that issue to others to debate.

³ There are half again as many Class A and LPTV stations as there are full power TV stations; or put another way, 60% of the nation's television stations are Class A and LPTV (disregarding TV translators). See "Station Totals as of December 31, 2004," Public Notice released February 10, 2005.

petition recounts the real-life damage that has been caused by the current state of the rules and the Commission's inaction. The petition asks the Commission to amend its network and syndicated exclusivity rules simply to recognize the validity of and legal enforceability of those rights by Class A and LPTV stations when the stations are able to win them in private free market negotiations. RM-10335 has sat at the Commission for some three and one-half years without any response, despite repeated pleas, both written and oral, by Venture and CBA.

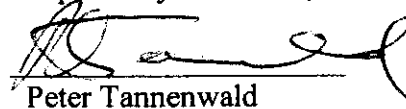
5. If the Commission is going to modify its exclusivity rules, it would be inexcusable to take up ACA's proposal without at the same time acting on RM-10335, which is at least as meritorious, as it asks only for regulatory recognition of the validity of the results of private market negotiations rather than abrogation of those results. Moreover, the Commission should make it clear that ACA's members must be consistent in that if they claim that they will honor private exclusivity rights for those stations that do not demand compensation for carriage, then they must include the exclusivity rights of Class A and LPTV stations that grant unpaid retransmission consent, even when the stations do not have the alternative option of must-carry.

6. As CBA has urged many times before, the Commission should act promptly to grant RM-10335, it certainly should not act on ACA's petition ahead of RM-10335, and it should require any small cable systems that obtain relief through ACA's petition to honor network and syndicated exclusivity rights held by Class A and LPTV stations.

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April 25, 2005

Respectfully submitted,



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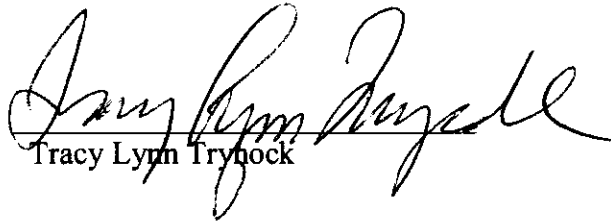
Counsel for the Community
Broadcasters Association

CERTIFICATE OF SERVICE

I, Tracy Lynn Tryock, do hereby certify that I have, this 25th day of April, 2005, caused a copy of the foregoing "*Ex Parte* Statement of the Community Broadcasters Association to be sent by first class United States mail, postage prepaid, to the following:

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